



THE COMMONWEALTH OF MASSACHUSETTS
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Sent via e-mail and either hand delivery or U.S. Mail

Mary L. Cottrell, Secretary
Massachusetts Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

re: Verizon's Unbundled Network Elements, D.T.E. 01-20 (Part A)

Dear Secretary Cottrell:

The Attorney General submits this Initial Brief to address the issues raised by the rates under which Verizon New England d/b/a Verizon Massachusetts ("Verizon" or "Company") will lease its unbundled network elements ("UNEs") to competitive local exchange carriers ("CLECs").¹ The Department of Telecommunications and Energy ("Department" or "DTE") should set just and reasonable rates for network elements so that Massachusetts consumers may benefit from a choice in service providers and receive improved voice and data services at lower prices. The Department also should require Verizon to designate clearly the density zones into which each wire center falls, and the Department should begin its next UNE review no later than January 2004.

1. VERIZON'S UNE RATES MUST BE SET AT THE LOWEST POSSIBLE RATES

The Telecommunications Act of 1996 requires the Department to set Verizon's UNE wholesale prices based on the cost of providing the network elements, requires that the prices be

¹ On January 12, 2001, the Department opened its investigation into Verizon's UNE prices. Verizon filed its UNE cost models, inputs, studies and supporting testimony on May 8, 2001. AT&T Communications of New England, Inc., ("AT&T") also filed a direct case on May 8, 2001. Several parties, including the Attorney General, intervened in the proceeding and conducted discovery on various aspects of the Verizon UNE cost studies, as well as on the terms and conditions of Verizon's UNE offerings. The Department conducted evidentiary hearings at its Boston offices from January 7, 2002 to February 7, 2002, during which Verizon, AT&T, MCI WorldCom, a coalition of competitive local exchange carriers ("CLECs"), Z-Tel Communications, and the U.S. Department of Defense sponsored witnesses.

nondiscriminatory, and allows the prices to include a reasonable profit (“just and reasonable

standard”). 47 U.S.C. § 252(d)(1). The UNE wholesale rates must be based on “retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(d)(3). Only costs that are actually avoided, not those that could be or might be avoided, should be excluded from the wholesale rates. *Iowa Utilities Board v. Federal Communications Commission*, 219 F.3d 744, 755 (8th Cir. 2000).

The Federal Communications Commission (“FCC”) requires the Department to set Verizon’s UNE prices based on the total element long-run incremental cost (“TELRIC”) of providing those elements. These TELRIC costs must be structured for a hypothetical carrier in a reconstructed network that includes existing wire center locations. Furthermore, the network must be configured with the most efficient telecommunications technology currently available. 47 C.F.R. § 51.505(a), (b)(1); Exh. ATT-5 at 3; Tr. 1, at 17-18, 21. The Department should reject Dr. Taylor’s interpretation that UNE costs should be based on a reconstruction of the network over a long period of time, instead of an instantaneous reconstruction, because the assumption contradicts the statutory and regulatory requirements and will inflate UNE prices unnecessarily. Tr. 1, at 18. Consumers will receive better services at lower prices and competition for those services will thrive if UNE rates are kept to their lowest levels that still comply with federal standards. Thus the DTE should set UNE rates at the lowest possible level, consistent with the just and reasonable standard.²

2. UNES CAN BE A VIABLE COMPETITIVE MODE OF ENTRY

By its January 12, 2001, Vote and Order to Open Investigation, the Department recognized that UNEs hold a valuable and important role as a competitive market force in the Massachusetts telecommunications industry. Competition for residential and business customers will increase if UNE prices are set at appropriate levels. In New York, CLECs have established over 1 million lines through UNE Platforms. Tr. 13, at 2563. While the corresponding figure in Massachusetts currently is much

² On February 14, 2002, Verizon Rhode Island announced that it had lowered some of its UNE rates in connection with its Section 271 application to the FCC to remove any remaining questions the FCC may have as to the rates’ reasonableness. *Application by Verizon New England, Inc., for Authorization to Provide In-Region InterLATA Services in the State of Rhode Island*, CC Docket 01-324, Verizon ex parte letter (February 14, 2002). These Rhode Island UNE rates appear to be lower than the proposed corresponding Massachusetts UNE rates. Although the record does not have a head-to-head comparison of Rhode Island versus Massachusetts costs, the Department should take official notice of the Rhode Island order under 220 C.M.R. § 1.10(2) and consider that Verizon can and has offered lower UNE rates in an adjoining state.

lower, the potential for competition remains as long as the Department sets reasonable UNE rates.³

3. THE DENSITY ZONE DESIGNATIONS MUST BE CLEAR

Typically, CLECs who want to provide service to customers in a particular community will order UNEs from Verizon's Tariff No. 17 based on the wire center closest to the customer. Verizon separates the wire centers into four density zones according to the number of access lines and the square miles covered by the wire center.⁴ During hearings, Verizon revealed that the Company has re-evaluated the classification of Massachusetts' 273 wire centers among the four density zones, and that the Company reclassified about 20 wire centers. The Attorney General asked Verizon to produce an updated list of the wire centers by density zones. RR AG-VZ-1, 1S; Tr. 17, at 3391-3395. The response confirms this reclassification. Based on the Company's response, the Department should require Verizon to amend Tariff No. 17 to reflect these changes so that carriers will be able to predict their costs of providing service to their customers.

4. THE DTE SHOULD REVIEW VERIZON'S UNE RATES EVERY THREE YEARS

The Department set Verizon's current UNE rates in 1996 and determined that it would review Verizon's UNE rates at the end of a five-year period, *i.e.*, January 2001. *Consolidated Arbitrations*, DPU 96-73/74, 96-75, 96-80/81, 96-83, 96-94, Phase 4 Orders; *Investigation of UNE Rates Tariff of Bell Atlantic*, D.T.E. 98-15 (Phases II, III), Order (March 19, 1999) at 15-16. Based on the record, the Department should not wait another five years before reviewing Verizon's UNE rates again. The telecommunications industry is a declining cost industry and, as several Verizon witnesses have testified, Verizon projects its UNE costs based on a three-year time period.⁵ If UNE prices

³ According to Verizon, the demand for UNE loops and UNE Platforms has grown from 1996 to 2001. Verizon reports that CLECs ordered 133,400 UNE loops and 56,400 UNE platforms in calendar year 2001. RR DTE-VZ-2. These figures are combined business and residential.

⁴ The four density zones, listed in Verizon Tariff DTE MA No. 17, Part A, section 5.1, are the metropolitan, urban, suburban, and rural density zones. RR DTE-VZ-1.

⁵ See, *e.g.*, Tr. 12 at 2402-2403 ("three years is a reasonable projection of growth ... we picked the three planning cycle" (Matt testimony), Tr. 1 at 30-32 ("If you go back in history and look at how successful five-year plans, technology plans, really are, they really aren't. I mean, this industry changes quickly." (Taylor testimony)., Tr. 4 at 617-618 ("The labor rates are forecasted two years out ... to make the nonrecurring costs forward-looking within an observable time frame (Meacham testimony). Given that a UNE review is, indeed, complex, expensive, and time consuming, the Department should not review the rates any sooner than every three years. If the Department follows a five-year cycle and waits until January 2006 to begin its next investigation, the Department may, as it has in the past, inadvertently force competitors to pay UNE prices that are out-dated. This is exactly the situation that faced the Department, Verizon, and the CLECs from 1999 to

(continued...)

remain static while costs decline, those UNE prices will no longer be cost-based and, consequently, will violate the FCC's pricing standards. Therefore, the Department should, at a minimum, commence its next UNE investigation no later than January 2004.

5. CONCLUSION

For these reasons, the Attorney General urges the Department to keep the unbundled network element competitive mode of entry open and viable by setting the lowest possible UNE rates that are just and reasonable. The Department should require Verizon to designate clearly the density zones into which each wire center falls so that carriers can better predict their costs of serving customers. Finally, the Department should begin its next UNE review no later than January 2004 because Verizon bases its UNE costs on a three-year projection of growth.

Sincerely,

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Assistant Attorney General
Utilities Division

KJR/kr

Enc.

cc: Marcella Hickey, Hearing Officer (10 copies)
Service list for D.T.E. 01-20 (w/enc.)

⁵(...continued)

2001, which prompted the Attorney General and several CLECs to urge the Department to open a new UNE investigation before the expiration of the initial five-year period. *See, e.g., AT&T petition to review Verizon UNE Rates*, March 13, 2000; *AG Comments supporting petition*, May 30, 2000.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Investigation by the Department on its own Motion into the)	
Appropriate Pricing, based upon Total Element Long-Run)	
Incremental Costs, for Unbundled Network Elements and)	
Combinations of Unbundled Network Elements, and the)	D.T.E. 01-20
Appropriate Avoided Cost Discount for Verizon New)	
England, Inc. d/b/a Verizon Massachusetts' Resale Services)	
in the Commonwealth of Massachusetts.)	
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding by e-mail and either hand-delivery or U.S. mail.

Dated at Boston this 5th day of March 2002.

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